

46 Am. Jur. 2d Judges § 175

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Judges

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IX. Disqualification to Act in Particular Case

C. Remedies and Procedure

3. Motion for Disqualification and Affidavit

a. In General

§ 175. Motion requirement for disqualification of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  [51\(1\)](#), [51\(3\)](#), [51\(4\)](#)

A.L.R. Library

[Affidavit or motion for disqualification of judge as contempt](#), 70 A.L.R.3d 797

Forms

Forms relating to motions to disqualify judge, or withdraw voluntarily as judge, generally, see Am. Jur. Pleading and Practice Forms, Judges [[Westlaw®\(r\) Search Query](#)]

The issue of a judge's disqualification is generally brought to the attention of the judge by a petition for a change of judge¹ or, where relevant, by filing an affidavit of prejudice.² As a general rule, the motion must initially be directed to and decided by the jurist whose impartiality is being challenged.³

Statutes or rules generally prescribe the exclusive method by which to challenge a judge,⁴ and the motion must be made in compliance with statutory procedures.⁵ In criminal cases, some jurisdictions apply rules of civil procedure to the disqualification of a judge,⁶ whereas others hold that to remove a judge for cause is procedural and governed by the rules of criminal procedure.⁷

Some statutes require that the motion actually be filed,⁸ and not merely served,⁹ and that the motion be in writing¹⁰ and verified;¹¹ although in other jurisdictions the motion need not be verified and may be signed by any party or by counsel¹² and may be orally made if supported by an oral statement under oath.¹³

CUMULATIVE SUPPLEMENT

Cases:

Along with a motion for a substitution of judge under criminal procedure rule governing substitution of judge, a defendant may also file a motion to recuse pursuant to Supreme Court rule governing disqualification. 725 Ill. Comp. Stat. Ann. 5/114-5; Ill. Sup. Ct. R. 63(C). *People v. Hinthorn*, 438 Ill. Dec. 368, 146 N.E.3d 122 (App. Ct. 4th Dist. 2019), appeal denied, 435 Ill. Dec. 701, 140 N.E.3d 259 (Ill. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 *State v. Williams*, 747 S.W.2d 635 (Mo. Ct. App. W.D. 1988); *Beharry v. Mascara*, 101 Pa. Commw. 582, 516 A.2d 872 (1986).
- 2 § 181.
- 3 *Com. v. Tharp*, 574 Pa. 202, 830 A.2d 519 (2003).
A motion to disqualify a trial judge on account of prejudice is addressed to the sound discretion of the trial court. *State v. Fleming*, 280 Neb. 967, 792 N.W.2d 147 (2010).
As to filing of motion in federal court, see Am. Jur. 2d, Federal Courts § 47.
- 4 *State ex rel. Sielen v. Circuit Court for Milwaukee County*, 176 Wis. 2d 101, 499 N.W.2d 657 (1993).
- 5 *Carson v. Serrano*, 96 S.W.3d 697 (Tex. App. Texarkana 2003).
- 6 *De Leon v. Aguilar*, 127 S.W.3d 1 (Tex. Crim. App. 2004).
- 7 *Hooper v. State*, 680 N.W.2d 89 (Minn. 2004).
- 8 *Arneault v. Arneault*, 216 W. Va. 215, 605 S.E.2d 590 (2004).
- 9 *Thomas v. The Chase Manhattan Bank*, 857 So. 2d 989 (Fla. 4th DCA 2003).
- 10 *Talton v. State*, 2004 WL 539289 (Tex. App. Texarkana 2004).
- 11 *Mann v. Russell's Trailer Repair, Inc.*, 787 N.E.2d 922 (Ind. Ct. App. 2003).
- 12 *State ex rel. Mateo D.O. v. Circuit Court for Winnebago County*, 2005 WI App 85, 280 Wis. 2d 575, 696 N.W.2d 275 (Ct. App. 2005) (motion signed by juvenile's attorney).
- 13 *Mayr v. Superior Court, In and For Tehama County*, 228 Cal. App. 2d 60, 39 Cal. Rptr. 240 (3d Dist. 1964).
As to necessity of filing affidavit of prejudice, see § 181.